

HONORABLE RONALD B. LEIGHTON

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

MICHAEL ELLIOTT,

Plaintiff,

v.

BNSF RAILWAY COMPANY,

Defendant.

CASE NO. C14-5054 RBL

ORDER DENYING PLAINTIFF'S
MOTION FOR TAX RELIEF

THIS MATTER is before the Court on Plaintiff Elliott's Motion for Tax Relief. [Dkt. #128]. Elliot asks the Court to equitably increase the amount of his jury award and judgment by \$208,601, to "offset" the increased tax burden Elliot faces because he will obtain a lump sum payment rather than paychecks over time.

This "gross up" request is a relatively new plaintiff's tool encouraged by *Blaney v. International Association of Machinists*, 114 Wn.App. 80, 55 P.3d 120 (Div. I, 2002), and *Eshelman v. Agere Sustems, Inc.*, 554 F.3d 426 (3rd Cir. 2006). Those cases do suggest that (at least in the context of the WLAD and the ADA, respectively) the court has equitable discretion to "make the Plaintiff whole" by effectively making the employer pay the increased tax burden. There is no similar case under the FRSA.

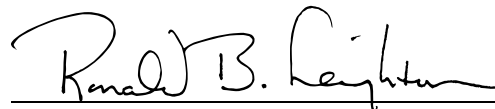
1 Assuming that such an award is possible, the Court declines to make such an award here.
2 Elliott concedes that Congress intentionally made back pay awards taxable, but also, presumably
3 intentionally, did not provide for such post-judgment awards in any remedial statute. Second,
4 there is no way to determine how much of the award is in fact back pay and how much is front
5 (or how much is for emotional distress); the jury awarded two very round numbers—\$1,000,000
6 damages and \$250,000 punitive damages. The jury could easily have arrived at its verdict with
7 the tax consequences already in mind. Elliot did not raise this issue during trial where it could
8 have been addressed in the instructions or verdict form.

9 Finally, this sort of award does not seem “equitable” or necessary to this Court,
10 particularly in this case, where the verdict (while in the realm of evidence) was moderately
11 surprising and certainly on the high end.

12 The Motion for an *additur* to offset the claimed increased tax burden is DENIED.

13 IT IS SO ORDERED.

14 Dated this 2nd day of November, 2015.

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17 Ronald B. Leighton
18 United States District Judge
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